

### REMARKS

Reconsideration of this application, as amended, is respectfully requested. Support for the amendments may be found throughout the application as filed.

The Examiner has rejected claims 1-15 and 21-34 under 35 U.S.C. S. 103 as being unpatentable over Borgstahl et al., U.S. Patent No. 5,909,183 ("Borgstahl") in view of Barrett et al., U.S. Patent No. 5,699,532 and Matsuno et al., U.S. Patent No. 5,548,296.

Independent claims 1, 7, 12, and 27 have been amended to recite additional functional language as requested by the Examiner at page 8 of the Office Action. Also, claims 1, 7, 12, and 27 have been amended to clearly provide for a designated quiet time slot within each frame transmission period of a communication channel.

Claims 1-15 and 21-34 are patentable under 35 U.S.C. S. 103 in view of the references cited by the Examiner. None of the cited references teach (nor does the Office Action cite any portion which even suggests) the presently claimed feature of a designated quiet time slot within each frame transmission period of a communication channel, wherein requests for access to the communication channel from new network components seeking to join the network are received within such designated quiet time slots.

The Office Action concedes that Borgstahl does not teach a designated time slot. Moreover, the Examiner also conceded at page 4, lines 4-5 of the January 31, 2001 Office Action that Borgstahl does not teach a connection request. Borgstahl describes a scheme for peer to peer communications. This is in contrast to the network communions recited in the claims. In the scheme described by Borgstahl, for example at cols. 6 and 7, a device listens to a channel to see if a compatible protocol is in use. If no transmissions are detected, the

device listens to see if a connection attempt is being sought. Only if no connection attempt by another peer is being sought does this device transmit a message. That is, only if the channel is silent does the device in question make a transmission. Thus, Borgstahl does not teach Applicants designated quiet time slot within each frame transmission period of a communication channel.

Even adding the teachings provided by Matsuno does not render the present invention obvious. Matsuno, describes a scheme wherein one base station in a network that is surrounded by a collection of other base stations send a request to the other, surrounding base stations seeking available channels or time slots from those base stations. When each of the other base stations has reported its idle channels or time slots, the base stations that originated the request chooses a common idle channel or time slot to the group and transmits a signal therein. In other words, Matsuno does not provide for a designated quiet time slot within each frame transmission period of a communication channel. Rather, Matsuno's includes an idle time slot which depends upon finding a common idle time slot or channel among a collection of base stations. There is no protocol which designates a quiet time slot within each frame transmission period of a communication channel. The idle time slot determination in Matsuno varies according to the time at which the original bay station transmits its request. Thus, even if this scheme were somehow incorporated in the system taught by Borgstahl, one would still not arrive at the claimed invention because there would be no designated quiet time slot within each frame transmission period of a communication channel. Matsuno clearly fails to cure the deficiencies noted with respect to Borgstahl and, therefore, the claims are patentable over the combination of Borgstahl and Matsuno.

Barrett fails to cure these deficiencies. Barrett describes a multiple path channel interface for a computer input/output system and goes on to describe a

negotiating process for determining "certain communication parameters at the time a transmission group is activated." See Barrett at col. 9, ll. 64-col. 10, l. 3. Barrett fails to describe the use of a communication protocol that includes a designated quiet time with each frame transmission period of a communication channel. Indeed, even the bandwidth negotiations recited in the present claims are different than those described by Barrett because the claimed bandwidth negotiations initiate within the designated quiet time slot and, as indicated above, Barrett fails to describe such a scheme. Accordingly, the claims are patentable over the combination of Borgstahl, Matsuno, and Barrett.

The combination of these references themselves are also suspect. Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention in which there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). The Office Action indicates that the references cannot be argued individually when cited in combination, but fails to recognize that such combinations are themselves improper when no motivation for the combination is shown. Indeed, rather than show any reasons for the recited combinations, it appears the teachings of the present application have been used as a blueprint to gather together and assemble various components of the prior art in the manner contemplated by the present applicant. This approach is a classic example of the use of hindsight reconstruction and cannot properly be used as grounds for rejecting the present claims.

The U.S. Court of Appeals for the Federal Circuit has strongly criticized such use of hindsight by specifically indicating that when an obviousness determination is made based upon a combination of references, even a patent examiner "must show reasons that the skilled artisan, confronted with the same

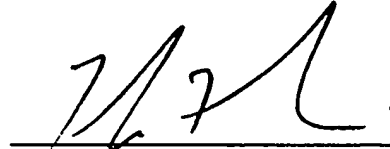
problems as the inventor *and with no knowledge of the claimed invention*, would select the elements from the cited prior art references for combination in the manner claimed." *In re Rouffet*, 149 F.3d 1350, 1357 (Fed. Cir. 1998) (Emphasis added). The Examiner merely arguing in his Office Action of March 21, 2002 that the claimed invention would be obvious to one of ordinary skill in the art based on the combination of the references is utterly inadequate. *Rouffet*, at 1357. Instead, a motivation, either from the references themselves or the knowledge of those of ordinary skill in the art, for the combination being relied upon needs to be shown. *Rouffet*, at 1357.

In the present case, no such motivation has been shown. Instead, the Examiner attempts to deconstruct the subject matter of the claims of the present application into its constituent components. He further states where each such component may be found in one of the cited references and then concludes that it would have been obvious to combine the references to arrive at the claimed invention. This bare bones analysis is not sufficient to support a determination of obviousness of the present application. The burden is on the Examiner to show *why* one skilled in the art is so motivated as to come up with the combination being relied upon. *Rouffet*, at 1357-1358 ("If such a rote invocation could suffice to supply a motivation to combine, the more sophisticated scientific fields would rarely, if ever, experience a patentable technical advance. Instead, in complex scientific fields [an infringer or the Patent Office] could routinely identify the prior art elements in an application, invoke the lofty level of skill, and rest its case for [obviousness]. To counter this potential weakness in the obviousness construct, the suggestion to combine requirement stands as a critical safeguard against hindsight analysis and rote application of the legal test for obviousness."). Accordingly, the present rejections under 35 U.S.C. §103(a) should be removed.

If there are any additional charges, please charge Deposit Account No. 02-2666.

Respectfully submitted,  
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## MARKED-UP VERSION OF THE AMENDED CLAIMS

1. (Fourth Amended) A method of seeking admission to a computer network having two or more current components, the method comprising:

listening at a first device to a communication channel having within each frame transmission period [one or more quiet time slots] a quiet time slot designated therein, the communication channel communicatively coupling the two or more current components of the computer network, the first device not initially admitted to the computer network, but capable of joining the computer network upon acceptance of a connection request transmitted within one of the designated quiet time slots from the first device to at least one of the network's current components;

determining at the first device, the existence of the designated quiet time slots within each of the frame transmission periods of the communication channel;

waiting for one of the designated quiet time slots; and

transmitting the connection request from the first device to a controller of the computer network within the one of the designated quiet time slots.

2. (Thrice Amended) The method of claim 1 [1, further comprising:] wherein receiving confirmation at the first device further comprises [confirming the connection request by transmitting the connection request from the controller] the controller transmitting the connection request to the first device to the first device periodically until a response from the first device is received by the controller.

7. (Thrice Amended) A method of seeking admission to a computer network having two or more current components, the method comprising:

determining at a first device not initially admitted to the computer network, but capable of joining the computer network, whether a communication channel communicatively coupling the two or more current components of the computer network is actively being utilized by the current components of the computer network;

listening at the first device to the communication channel, the communication channel having within each frame transmission period a quiet time slot designated therein, and the communication channel communicatively coupling the two or more current components of the computer network, the first device not initially admitted to the computer network, but capable of joining the computer network upon acceptance of a connection request transmitted within one of the designated quiet time slots from the first device to at least one of the network's current components;

determining at the first device, the existence of the designated quiet time slots within each of the frame transmission periods of the communication channel;

waiting for one of the designated quiet time slots; and

[determining at the first device the existence of one or more quiet time slots designated within the communications channel; and]

[transmitting a message from the first device, within one or more of the quiet time slots designated within the communication channel, at a time depending upon whether the communication channel is actively being utilized or not.]

transmitting the connection request from the first device to a controller of the computer network within the one of the designated quiet time

slots within which the connection request is to be made, at a time depending upon whether the communication channel is actively being utilized or not.

12. (Twice Amended) A method of seeking admission to a computer network having two or more current components, at least one component being a network controller, the method comprising:

listening at the network controller for a connection request packet [message] transmitted [in a] within a designated quiet time slot in a communication channel, each frame transmission period of the communication channel including one of the designated quiet time slots, the connection request transmitted by a first device not initially admitted to the computer network, but capable of joining the computer network, the connection request seeking access for the first device to [a] the communication channel communicatively coupling the network's two or more current components; and

negotiating bandwidth requirements within the communication channel with the first device upon receipt of the connection request message.

27. (Twice Amended) A method of providing access to a computer network, comprising:

organizing communications within a computer network communication channel into a number of time slots within each frame transmission period of the communication channel, each time slot being designated for transmissions from one of a number of network components; and

including a designated quiet time slot within each frame transmission period of the communication channel for use by a first device seeking access to the communication channel, the first device not initially admitted to the network, but capable of joining the computer network.